

KHSAA DUE PROCESS PROCEDURE

(Case situations refer to rulings and interpretations used to interpret and administer these provisions which can be found in the Case Situation section of the Handbook. Where possible, additional cross-referencing information has been included).

In compliance with KRS Chapter 13B, the Board of Control of the Kentucky High School Athletic Association has adopted the following Due Process Procedure for appealing rulings of the Commissioner. Only relevant, additional definitions are listed in this procedure, and all other procedural questions, definitions and interpretations default to the current adopted version of Chapter 13B.

1. Definitions

"Agency Head" means the Commissioner of the KHSAA or the person designated with such authority in the event of his/her inability to serve, and who is responsible for entry of a final order in Hearing Officer Matters.

"Aggrieved Party" means the person within the confines of KRS Chapter 13B who is directly involved and aggrieved in a decision made within this Procedure. This could include but not be limited to,

- a) the Principal of the sending and receiving school in the case of a transferring student (Bylaw 6);
- b) the Principal of the enrolled school of a specific student in a matter related to Bylaws 2 through 13 (excluding 6);
- c) a student who has reached the age of eighteen (18), or the custodial parents of a minor student in a matter related to Bylaws 2 through 13; or
- d) the Principal of the directly involved and named member school in the case of any matter over which the Board of Control has final jurisdiction and does not involve an Independent Hearing Officer.

"Board Matters" means those matters not defined as Hearing Officer Matters, which are heard through a hearing before the KHSAA Board of Control.

"Board of Control" means the duly elected or appointed members of the Board of Control of the KHSAA, and is the body responsible for entry of a final order in Board matters.

"Commission" means the person hired as the Commissioner of the KHSAA or the member of the Assistant Commissioners in accordance with the amended Federal Consent decree.

"Commissioner" means the person hired as the Commissioner of the KHSAA or the member of the Commission (Assistant Commissioner) designated by the Commissioner to rule in a particular matter.

"Final Order" means the whole or part of the final disposition of an administrative hearing, whenever made effective by the Commissioner or Board of Control.

"Hearing Officer Matters" means eligibility matters related to KHSAA Bylaw 2 (Physician's Certificate), 4 (Enrollment), 5 (Minimum Academic Requirement), 6 (Transfer Rule), 7 (Foreign Exchange), 8 (Contestant on Other Teams, Post Season and All-Star Games), 9 (Other Eligibility Requirements and Regulations), 12 (Awards), 13 (Financial Aid), which are conducted through a process utilizing an Independent Hearing Officer under KRS Chapter 13B.

"KHSAA" means the Kentucky High School Athletic Association.

"Party" means:

- a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;
- b) the Principal of the sending and receiving school in the case of a transferring student (Bylaw 6);
- c) the Principal of the enrolled school of a specific student in a matter related to Bylaws 2 through 13 (excluding 6);
- d) Any other person who is duly granted intervention in an administrative hearing; and
- e) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by the law being enforced to participate fully in the administrative hearing.

"Recommended Order" means the whole or part of a preliminary hearing report to the Commissioner for the final disposition of an administrative hearing.

"Regional Investigative Committee" means the representatives of

the member schools within a region as defined in the basketball alignment, who are selected within approved Board of Control policies to assist in the acquiring of information related to a specific eligibility matter.

"Ruling Officer" means the member(s) of the Commission designated by the Commissioner to make initial eligibility determinations in Hearing Officer Matters.

2. Ruling Officer's Authority to Rule

Requests for initial rulings shall be made in writing to the KHSAA with a return address for response. Oral requests for rulings or requests by electronic mail will not be accepted.

With respect to Board matters, the Commissioner is empowered to make initial rulings and interpret the provisions of the KHSAA Constitution, Bylaws and Tournament Rules as it relates to the eligibility of a student-athlete, member school or contest official and to restore such eligibility. With respect to Hearing Officer matters, the Ruling Officer(s) is/are empowered to make initial rulings and interpret the provisions of the KHSAA Constitution, Bylaws and Tournament Rules as it relates to the eligibility of a student-athlete, member school and to restore such eligibility. Such restoration may only be granted in cases where strict application of the applicable bylaw is unfair to the student athlete and the circumstances creating the ineligibility are clearly beyond the control of all of the parties involved.

The Commissioner/Ruling Officer shall act upon any request for initial ruling filed in accordance with this procedure when all information is available. Any appeal seeking a ruling based on unknown or speculative factors shall be denied as being premature. Unless further investigative information is needed, it shall be the objective of the Commissioner/Ruling Officer to make the initial ruling within thirty (30) calendar days of receipt of the request.

3. Appeals to the Hearing Officer (Hearing Officer Matters)

If an aggrieved party is affected by a ruling of the Ruling Officer(s) interpreting a provision or provisions of a Hearing Officer Matter, the party may appeal the ruling to a hearing officer of the KHSAA through the Commissioner's office. If the appeal is timely filed, a hearing shall be conducted in accordance with these procedures.

All appeals shall be filed within fifteen (15) calendar days of the issuance of the decision from the Ruling Officer(s). Appeals not timely filed shall not be heard, absent clear and compelling justification.

Any appeal seeking a ruling based on unknown or speculative factors shall be dismissed by the hearing officer as being premature and eligibility denied.

4. Appeals to Board of Control (Board Matters)

If an aggrieved party is affected by a ruling of the Commissioner interpreting a provision or provisions of a Board Matter, the party may submit a written notice of appeal of the decision and request for a formal hearing before the Board of Control. All appeals must be filed within fifteen (15) days of the issuance of the ruling by the Commissioner. Appeals not timely filed shall not be heard, absent clear and compelling justification. The Board of Control shall conduct a formal hearing and act on an appeal at the next scheduled meeting provided that a minimum of ten (10) days has passed since receipt of the written notice of appeal.

Aggrieved and affected parties may request a special meeting of the Board of Control prior to the next regularly scheduled meeting. The request shall be ruled upon by the President of the Board of Control and, if the request is granted, the requesting party shall be responsible for all costs and expenses associated with special meeting, including travel costs.

Any appeal seeking a ruling based on unknown or speculative factors shall be dismissed by the Board of Control as being premature and eligibility denied

5. Support Information

The KHSAA staff, Hearing Officer and/or Board of Control may request support documentation for all matters upon which an appeal is based.

Prior to issuing a recommended order in a Hearing Officer Matter, the hearing officer may direct the Commissioner's office to perform any investigative functions necessary to ensure that all support documentation and evidence is considered in making a recommendation.

6. Notice of Hearing

Notice shall be made to the Principal of all schools directly involved with an appeal and to the appealing party (ies) If an individual is pursuing the appeal and not a member school, notice shall also be made by first class mail to the Principal of all member schools that are parties to the proceeding.

The notice shall be plain in nature and shall include:

- a) All information and notices required by KRS Chapter 13B; and
- b) A copy of the KHSAA Due Process Procedure.

7. Attendance at the Hearing

Representatives of appealing parties and all potentially affected parties are advised, recommended and encouraged to attend hearings. In the instance of a student submitting the appeal, the Principal of member school that the student attends may represent the student at the administrative appeal. Any person entitled to be in attendance at the hearing may represent himself or herself. These persons are also entitled to be represented by counsel, provided that they notify all other parties involved in the appeal of the name, address and telephone number of the counsel at least three (3) business days in advance of the hearing.

8. Administrative Hearing Procedures

Administrative hearings conducted involving Hearing Officer Matters shall be conducted in accordance with KRS Chapter 13B. Hearings conducted by the Board of Control shall be conducted in accordance with Roberts Rules of Orders and adopted Board of Control meeting procedures.

If an aggrieved or interested party fails to attend or participate in a hearing, the Commissioner, hearing officer or the Board of Control, at its discretion, may deny that party the right to seek additional review or present additional evidence at a later date.

9. Recommendation of Hearing Officer in Hearing Officer Matters

The recommendation of the hearing officer shall be completed and submitted to the Commissioner not less than thirty (30) calendar days after receiving the official record of the proceeding. The decision shall include findings of fact, conclusions of law and recommended disposition of the hearing, including any recommended penalties, if applicable.

A copy of the hearing officer's recommended order shall also be sent to each party in the hearing.

Each party shall have fifteen (15) days from the date a hearing officer's recommended order is mailed within which to file exceptions to the recommendations with the Commissioner.

The KHSAA shall maintain on file an official record of the complete proceedings of each administrative hearing and subsequent official actions.

10. Decision of the Commissioner in Hearing Officer Matters

The Commissioner shall act on a recommended order of the Hearing Officer in Hearing Officer Matters within fifteen (15) days after the deadline to file exceptions.

The Commissioner may:

- (a) accept the recommended order and adopt it as the Agency Head's final order;
- (b) reject or modify in whole or in part the recommended order; or
- (c) remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

If the final order differs from the recommended order, the Commissioner shall include separate statements of findings of fact and conclusions of law.

In making a final order, the Commissioner shall only consider the record including the recommended order and any exceptions duly filed to a recommended order. The Commissioner shall not consider new and additional evidence or allow oral argument, except that the Commissioner may grant a motion to introduce new and additional evidence and/or make oral argument if significant factual circumstances have changed since the administrative hearing or the administrative record does not permit adequate review of the hearing proceedings.

The final order shall be in writing and stated in the record. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.

11. Foreign Students Not Coming Through Board of Control Approved Programs

Any foreign student not being placed in a Kentucky school through an approved exchange agency may request eligibility during the initial year enrolled at a Kentucky school by applying directly through this appeals process in accordance with Bylaw 7.

The Hearing Officer shall determine the legitimacy of the transfer and the conditions for exceptions to the one-year period of ineligibility and shall make a recommendation to the Board of Control. A recommendation for the student to be eligible should only be made in cases where strict application of the applicable bylaw is unfair to the student athlete and the circumstances creating the ineligibility are clearly beyond the control of all of the parties involved.

In order to be considered for this waiver, the student shall:

- a) be in compliance with all U.S. Immigration and Naturalization Service regulations;
- b) be in the first and only year as a student at the school;
- c) not be a graduate of the 12th or terminating grade or its equivalent in either the U.S. or his/her home country;
- d) be in possession of a complete transcript of records that has been translated into English prior to the request for eligibility; and
- e) be in possession of a J-1 student or other educational visa issued by the U.S. Immigration and Naturalization Service.

In addition, the student's host family cannot include members of the coaching staff at the KHSAA member school at which participation is desired.

Any student having requested and been granted a waiver of the one-year period of ineligibility shall not be eligible, under any circumstances, for any additional eligibility while enrolled in a KHSAA member school.

12. Judicial Review

Final orders of the Commissioner in Hearing Officer Matters and the Board of Control in Board matters may be subject to judicial review in accordance with KRS Chapter 13B. A party may institute an appeal by filing a petition in the appropriate Circuit Court within thirty (30) days after the final order is mailed or delivered by personal service. A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within this procedure.

1. Definitions

"KHSAA" means the Kentucky High School Athletic Association;

"Commissioner" means the person hired as the Commissioner of the KHSAA or the member of the Commission (Assistant Commissioner) designated by the Commissioner to rule in a particular matter;

"Board of Control" means the duly elected or appointed members of the Board of Control of the KHSAA, and is the body responsible for entry of a final order;

"Recommended Order" means the whole or part of a preliminary hearing report to the Board of Control for the final disposition of an administrative hearing;

"Final Order" means the whole or part of the final disposition of an administrative hearing, whenever made effective by the Board of Control;

2. Foreign Students Not Coming Through Board of Control Approved Programs

Any foreign student not being placed in a Kentucky school through an approved exchange agency may request eligibility during the initial year enrolled at a Kentucky school by applying directly through this appeals process in accordance with Bylaw 6. The Hearing Officer shall determine the legitimacy of the transfer and the conditions for exceptions to the one year period of ineligibility and shall make a recommendation to the Board of Control. A recommendation for the student to be eligible should only be made in cases where strict application of the applicable bylaw is unfair to the student athlete and the circumstances creating the ineligibility are clearly beyond the control of all of the parties involved. In order to be considered for this waiver, the student shall be in compliance with all U.S. Immigration and Naturalization Service regulations; must be in the first and only year as a student at the school; must not be a graduate of the 12th or terminating grade or its equivalent in

either the U.S. or his/her home country, shall be in possession of a complete transcript of records that has been translated into English prior to the request for eligibility, and shall be in possession of a J-1 student or other educational visa issued by the U.S. Immigration and Naturalization Service. In addition, the student's host family cannot include members of the coaching staff at the KHSAA member school at which participation is desired. Any student having requested and been granted a waiver of the one-year period of ineligibility shall not be eligible, under any circumstances, for any additional eligibility while enrolled in a KHSAA member school.

3-Commissioner's Authority to Rule

Requests for rulings should be made in writing with a return address for response. Oral requests for rulings and/or requests by electronic mail will not be accepted. The Commissioner is empowered to interpret the provisions of the KHSAA Constitution, Bylaws and Tournament Rules in accordance with Article IV, Section 3 of the KHSAA Constitution. The Commissioner is also empowered to restore the eligibility of students or other participants who do not meet the provisions of KHSAA Bylaw 2 (Physician's Certificate), 4 (Enrollment), 5 (Minimum Academic Requirement), 6 (Transfer Rule), 7 (Conduct), 8 (Contestant on Other Teams, Post Season and All-Star Games), 9 (Other Eligibility Requirements and Regulations), Bylaw 10 (Recruitment), or 12 (Awards). Such restoration may only be granted in cases where strict application of the applicable bylaw is unfair to the student athlete and the circumstances creating the ineligibility are clearly beyond the control of all of the parties involved.

The Commissioner shall act upon any appeal filed in accordance with this procedure when all information is available to all parties. Any appeal seeking a ruling based on unknown or speculative factors shall be denied by the Commissioner as being premature. Unless further investigative information is needed, it shall be the objective of the KHSAA to have the Commissioner's determination within thirty (30) calendar days of receipt of the request.

4-Appeals to the Hearing Officer

If a participant affiliated with a KHSAA member school, parent affiliated with a KHSAA member school, contest official, coach affiliated with a KHSAA member school or other official representative of a KHSAA member school is aggrieved and affected by a ruling of the Commissioner interpreting a provision or provisions of KHSAA Bylaw 2 (Physician's Certificate), 4 (Enrollment), 5 (Minimum Academic Requirement), 6 (Transfer Rule), 7 (Conduct), 8 (Contestant on Other Teams, Post Season and All-Star Games), 9 (Other Eligibility Requirements and Regulations), Bylaw 10 (Recruitment), or 12 (Awards), the party may appeal the ruling to a hearing officer of the KHSAA through the Commissioner's office. If the appeal is timely filed, a hearing shall be conducted in accordance with these procedures.

All appeals involving student eligibility relating to a fall sports participant (desiring to participate in cross-country, football, golf, soccer or volleyball) shall be filed by the immediately preceding July 15th, the winter season (desiring to participate in basketball, swimming or wrestling), by the immediately preceding September 15th, and the spring season (desiring to participate in baseball, softball, tennis or track), by the immediately preceding January 15th. All appeals filed after these deadlines for a particular season shall be filed within fifteen (15) calendar days of the issuance of the decision from the Commissioner. Appeals not timely filed shall not be heard, absent clear and compelling justification.

Any appeal seeking a ruling based on unknown or speculative factors shall be dismissed by the hearing officer as being premature and eligibility denied.

5-Appeals to Board of Control

If a participant affiliated with a KHSAA member school, parent affiliated with a KHSAA member school, contest official, coach affiliated with a KHSAA member school or other official representative of a KHSAA member school is aggrieved and affected by a ruling of the Commissioner interpreting a provision or provisions of the bylaws of the Association (other than 2, 4, 5, 6, 7, 8, 9, 10 and 12 as detailed above), the party may submit a written notice of appeal of the decision and request for a formal hearing before the Board of Control. All appeals must be filed within fifteen (15) days of the issuance of the ruling by the Commissioner. The Board of Control shall conduct a formal hearing and act on an appeal at the next scheduled meeting provided that a minimum of ten (10) days has

passed since receipt of the written notice of appeal.

Aggrieved and affected parties may request a special meeting of the Board of Control prior to the next regularly scheduled meeting. The request shall be ruled upon by the President of the Board of Control and, if the request is granted, the requesting party shall be responsible for all costs and expenses associated with special meeting, including travel costs.

Any appeal seeking a ruling based on unknown or speculative factors shall be dismissed by the Board of Control as being premature and eligibility denied.

6-Support Information

The Commissioner or his/her staff, or a representative of the Association designated by the Commissioner, Hearing Officer and/or Board of Control may request support documentation for all matters upon which the appeal is based.

Prior to issuing a recommended order, the hearing officer may direct the Commissioner's office to perform any investigative functions necessary to ensure that all support documentation and evidence is considered in making a recommendation.

7-Notice of Hearing

If an individual is pursuing the appeal and not a member school, notice shall also be made by first class mail to all affected member schools:

The notice shall be plain in nature and shall include:

- a) All information and notices required by KRS Chapter 13B; and
- b) A copy of the KHSAA Due Process Procedure.

8-Attendance at the Hearing

Representatives of appealing parties and all potentially affected parties are advised, recommended and encouraged to attend hearings. In the instance of a student submitting the appeal, the member school that the student attends may represent the student at the administrative appeal. Any person entitled to be in attendance at the hearing may represent himself or herself. These persons are also entitled to be represented by counsel, provided that they notify all other parties involved in the appeal of the name, address and telephone number of the counsel at least three (3) calendar days in advance of the hearing.

9-Hearing Procedures

The hearings shall be conducted in accordance with KRS Chapter 13B:

If an aggrieved or interested party fails to attend or participate in a hearing, the hearing officer or the Board of Control, at its discretion, may deny that party the right to seek additional review or present additional evidence at a later date.

10-Recommendation of Hearing Officer

The recommendation of the hearing officer shall be completed and submitted to the Commissioner not less than thirty (30) calendar days after receiving the official record of the proceeding. The decision shall include findings of fact, conclusions of law and recommended disposition of the hearing, including any recommended penalties, if applicable.

A copy of the hearing officer's recommended order shall also be sent to each party in the hearing.

Each party shall have fifteen (15) days from the date a hearing officer's recommended order is mailed within which to file exceptions to the recommendations with the Board of Control.

11-Decision of the Commissioner and Board of Control

The Board of Control shall act on a recommended order at the next scheduled meeting provided that a minimum of ten (10) calendar days has passed since the deadline to file exceptions to the recommendations with the Board of Control.

The Board of Control may: accept the recommended order and adopt it as the Board of Control's final order; reject or modify in whole or in part the recommended order; or remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate. If the final order differs from the recommended order, the Board of Control shall include separate statements of findings of fact and conclusions of law.

In making a final order, the Board of Control shall only consider the record including the recommended order and any exceptions duly filed to a recommended order. The Board of Control shall not consider new and additional evidence or allow oral argument, except that the President of the Board of Control may grant a motion to introduce new and additional evidence and/or make

~~oral argument if significant factual circumstances have changed since the administrative hearing or the administrative record does not permit adequate review of the hearing proceedings. The final order shall be in writing and stated in the record. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.~~

~~12. Judicial Review~~

~~Final orders of the Board of Control shall be subject to judicial review in accordance with KRS Chapter 13B. A party shall institute an appeal by filing a petition in the appropriate Circuit Court within thirty (30) days after the final order is mailed or delivered by personal service. A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within this procedure.~~

~~13. Records~~

~~The KHSAA shall maintain on file an official record of the complete proceedings of each administrative hearing and subsequent official actions.~~

(See Case Situations DPP-1, DPP-2, DPP-3, DPP-4 and DPP-5)